IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9203 of 2005

Between:

1 M/s. Azam Foods Products Pvt. Ltd., rep by its Managing Director, Mohd. Azam, S/o. Mohd. Fazil, aged 67 years, Occ : Business, R/o. 28-142, New Bazar, Jadcherla, Mahaboobnagar District.
2 Mohammed Moazzam Azmi, S/o. Md. Azam, H.No. 28-142 to 28-145, Adj. To Azam Rice, Mills (Old) Jadcherla - 509 301, Mahaboobnagar District.
3 Mohammed Muffaquam Azmi, S/o. Md. Azam, (28-142 to 28-145) Adj. to Azam Rice Mills (Old) Jadcherla, Mahaboobnagar District.
4 Mohammed Fazil Azmi, S/o. Md. Azam, H.No. 28-142 to 28-145, Adj. to Azam Rice Mills (Old) Jadcherla - 509301, Mahaboobnagar District.
5 Mrs. Afwan Banu, S/o. Md. Azam, Legal heir of Mrs. Akther Begum, H.No. 28-142 to 28-145, Badepally, Jadcherla - 509301, Mahaboobnagar District.
6 Mrs. Asma Banu, D/o. Mohd. Azam, Legal heir of Mrs. Akther Begum, H.No. 28-142 to 28-145, Badepally, Jadcherla - 509301, Mahaboobnagar District.

..... PETITIONERS

AND

1 The Chairman, Andhra Bank Head Office, Dr. Pattabhi Bhavan, Saifabad, Hyderabad.
2 Andhra Bank - Jedcherla Branch, Rep by its Bank Manager, Jedcherla, Mahaboobnagar District.
3 G. Prabhakar Reddy, S/o. Not known to the petitioner, 40 years, Occ. Senior Branch Manager, Andhra Bank, Jedcherla Branch, Jedcherla, Mahaboobnagar District.
4 Authorised Officer, Andhra Bank, Zonal Office,

Bellary Road, Kurnool - 518 004.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ, Order or direction, more specially a Writ of Mandamus or any other appropriate Writ directing the Respondents not to interfere with the functioning of the 1st Petitioner by declaring the action of the Respondents in issuing Letter No. 679/11/1549, dated 23-3-2005 as arbitrary illegal and unconstitutional and against the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 pass such other order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Counsel for the Petitioner : MS. I.MAAMU VANI

Counsel for the Respondents : MR. NUTY RAM MOHAN RAO

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.9203 OF 2005

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ORDER :

This writ petition is filed aggrieved by the action of the respondents in issuing the letter dated 23-3-2005 under Section 13 (2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') by the 4th respondent, whereunder the petitioners were called upon to pay a sum of Rs.2,59,94,500-28 ps which is due towards the term loan and open cash credit facility of Rs.1,07,09,773/- availed by the petitioners from the 2nd respondent Bank.

The petitioners do not dispute the fact that the 1st petitioners Company has availed the abvoesaid loan facilities from the 2nd respondent Bank. It also appears from the material on record that both the term loan as well as open cash credit account availed by the 1st petitioner were declared as non-performing assets and since the amounts due were not paid the hypothecated stocks were seized by the 2nd respondent on 22-2-2005. Thereafter, by letter dated 23-2-2005 when the 1st petitioner was called upon to repay the entire dues on or before 13-03-2005, the 1st petitioner filed W.P.No.4804 of 2005 contending that since the representation made by the petitioners dated 13-1-2005 requesting the 1st respondent to release the seized stocks and also to grant permission to release the title deeds deposited with the Bank was pending, the 2nd respondent was not justified in initiating coercive steps for recovery of the amounts due. The said writ petition was disposed of by order dated 14-03-2005 with a direction to the 1st respondent to dispose of the representation of the 1st petitioner dated 13-1-2005 within a period of three weeks

and till such time the second respondent was directed not to take any coercive steps as indicated in the letter dated 23-02-2005.

In this writ petition, the grievance of the petitioners is that while the representation of the 1st petitioner dated 13-1-2005 is still pending with the 1st respondent Bank, at the instance of the third respondent, the 4th respondent has issued the impugned notice under Section 13(2) of the Act calling upon to pay the entire dues within a period of 60 days failing which the Bank would take measures against the property hypothecated / mortgaged to the Bank to recover the amount as per the provisions of the Act. The petitioners contend that the action of the respondents in issuing the impugned notice while the representation is still pending is arbitrary and illegal and also in violation of the orders of this Court in W.P.No.4804 of 2005. It is also contended that since the property offered as collateral security is mostly agricultural lands, it is clearly exempted from the provisions of the Act by virtue of Section 31 of the Act. It is further contended that the amount due under the loan is less than 20% of the loan and therefore on that ground also the provisions of the Act are not attracted.

When the matter is taken up for consideration, the learned Standing Counsel appearing for the Respondent Bank under instructions submitted that the 1st respondent having considered the representation of the petitioners dated 13-01-2005 has already passed an order on 19-04-2005 informing the 1st petitioner that if he really intends to settle the account amicably, he may contact their branch and zonal office for settlement of the account under compromise policy of the Bank and that if his proposal is acceptable to the Bank as per Bank's norms, the same would be considered failing which Bank would take necessary steps for realization of amount due.

The learned Counsel for the respondents also points out that under the impugned notice, issued under Section13 (2) of the Act, the petitioners were only called upon to discharge the liabilities within 60 days and in case the petitioners have any objection, it is always open to them to raise such objection as provided under sub-

Section (3-A) of Section 13 of the Act, in which event the same will be considered by the respondents in accordance with law.

Having heard the learned Counsel for the petitioners and on a perusal of the material on record, I am of the view that the fourth respondent cannot be found fault with in issuing the impugned notice under Section 13(2) of the Act merely on the ground that the representation of the 1st petitioner dated 13-1-2005 was not disposed of. As can be seen from the order in W.P.No.4804 of 2005, the direction to the 2nd respondent was not to take any coercive steps to sell the ***seized stocks*** as indicated in the letter dated 23-03-2005. Hence, the respondent Bank is not precluded from proceeding further under law for the recovery of the amounts due.

Be that as it may, now that the 1st respondent has already passed on order dated 19-04-2005, if aggrieved it is for the petitioners to challenge the same by instituting appropriate proceedings. That apart, as rightly contended by the learned Counsel for the respondents, under sub-Section (3-A) of Section 13 of the Act, if the petitioners intend to raise any objection to the action proposed under the impugned notice issued under Section 13 (2) of the Act, it is open to them to raise such objections in which event the respondent Bank shall consider the same and communicate the order to the petitioners within one week after receipt of such objections either accepting the objections or the reasons for non-accepting the objections. Hence, I am not inclined to express any opinion with regard to the contentions raised by the petitioners as to the applicability of the Act to the case on hand on the grounds that the collateral security is exempted under the provisions of the Act and that the amount due is less than 20% of the loan. It is open to the petitioners to raise such objections as provided under sub-Section (3-A) of Section 13 of the Act.

Hence, I do not find any justifiable reason to grant the relief as prayed for.

Accordingly, granting leave and liberty to the petitioners to work out the remedy as indicated above, the Writ Petition is disposed of. No costs.

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29th April, 2005.

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To

1 The Chairman, Andhra Bank Head Office, Dr. Pattabhi Bhavan, Saifabad, Hyderabad.
2 The Bank Manager, Andhra Bank - Jedcherla Branch, Jedcherla, Mahaboobnagar District.
3 The Senior Branch Manager, Andhra Bank, Jedcherla Branch, Jedcherla, Mahaboobnagar District.
4 The Authorised Officer, Andhra Bank, Zonal Office,
Bellary Road, Kurnool - 518 004.

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